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February 18, 2005

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0134

This Decision concerns the eligibility of XXXXXXXXXXXX XXX (hereinafter referred to as "the individual") to hold an access authorization (also known as a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) informed the individual that it was in possession of reliable information that created a substantial doubt regarding the individual's eligibility for access authorization under the provisions of Part 710. As set forth below it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored.

I. Background

The individual in this case has been diagnosed with alcohol abuse. The individual and both of the expert witnesses who testified at the hearing in this proceeding agree that this diagnosis is accurate.¹ However, both expert witnesses also agree that the individual is now sufficiently reformed and rehabilitated to resolve the security concerns raised by his past alcohol abuse.

The individual is employed by a contractor at a DOE facility and has held a security clearance since 1990. Tab 1, Exhibits 1-10, 12-14. In 2001, the individual enrolled himself in a local alcohol rehabilitation program, and reported this to his manager. Tab 3, Ex. 2. Based on this incident report, DOE conducted a personnel security interview (PSI) with the individual to explore the security concern raised by this potentially derogatory information. Tab 5, Ex. 3. The individual authorized the release of medical records and DOE convened another PSI in March 2002 to provide the individual with the opportunity to explain information contained in those records. Tab 5, Ex. 2 at 5. Unable to resolve the security

¹ The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

concern, DOE referred the individual to a DOE consultant-psychiatrist (DOE psychiatrist) for a mental evaluation. The DOE psychiatrist evaluated the individual in June 2002 and concluded that the security concern was mitigated because the individual showed adequate evidence of rehabilitation or reformation from alcohol abuse. Tab 2, Ex. 2 at 27.

In March 2003, the individual was arrested for driving while intoxicated, and he reported that arrest to the local security office. Tab 3, Ex. 1. Because this derogatory information raised a security concern, DOE conducted another PSI in April 2003. Tab 5, Ex. 1. This PSI did not resolve the security concerns raised by the arrest and in August 2003 the individual was evaluated again by the DOE psychiatrist, who conducted an examination of the individual and reviewed selected portions of the individual's security file and medical records. Tr. at 22; Tab 2, Ex. 1.

On August 18, 2003, the DOE psychiatrist issued a report in which he concluded that the individual meets the criteria for Alcohol Abuse as set forth in the Diagnostic and Statistical Manual of Mental Disorders, IV-TR (DSM-IV-TR). Tab 2, Ex. 1 (Report). The DOE psychiatrist further opined that the individual was in the early stages of alcoholism and was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his alcohol abuse. Report at 19. In order to demonstrate rehabilitation, the DOE psychiatrist concluded that the individual would need to "[p]roduce documented evidence of attendance at [Alcoholics Anonymous (AA)] for a minimum of 100 hours with a sponsor, at least once a week, for a minimum of one year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one year." Report at 21. The DOE psychiatrist further opined that the individual could show reformation in either of two ways: (1) if the individual followed the rehabilitation program, then one year of absolute sobriety would show adequate evidence of reformation; or (2) if the subject did not go through the rehabilitation program, two years of absolute sobriety would be necessary to show adequate evidence of reformation." *Id.*

After receipt of the Report, the local security office initiated an administrative review proceeding. In April 2004, DOE informed the individual of his right to a hearing and how to proceed to resolve the security concerns that had created a doubt regarding his eligibility for access authorization. Notification Letter (April 23, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h), (j) and (l) (Criteria H, J and L).² DOE invoked Criterion H because the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. The DOE psychiatrist further concluded that alcohol abuse causes or may cause a significant defect in the individual's judgment or reliability. The

² Criterion H is invoked on the basis of information that an individual "has an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8 (h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j). Criterion L concerns information that a person has "engaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8 (l).

DOE Operations Office invoked Criterion L based on the individual's alcohol related arrest in March 2003.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). I was appointed as Hearing Officer in this case. After conferring with the individual's counsel and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE psychiatrist testified on behalf of the agency. The individual testified on his own behalf and also elected to call his counselor and seven additional witnesses.

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored because I find that restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. DOE's Security Concern

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and

have been recognized by a number of Hearing Officers in similar cases.” *Personnel Security Review*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Review*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the alcohol had the effect of impairing the individual's judgment such that he operated a motor vehicle while intoxicated, violated the law, and was arrested in March 2003. Tab 3, Ex. 1. The individual was diagnosed by a DOE psychiatrist as suffering from alcohol abuse. Tab 2, Ex. 1. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H, J and L in this case.

B. Findings of Fact

The individual does not dispute the DOE psychiatrist's diagnosis of alcohol abuse. Tr. at 196, 206-207. Thus, the only issue before me is whether the individual has submitted adequate evidence of his rehabilitation or reformation from alcohol abuse in order to resolve the security concerns raised by his condition.

Concerned by his excessive alcohol consumption, in July 2001 the individual enrolled himself in the EAP program at his facility and, a month later, in a local alcohol rehabilitation program. Tab 5, Ex. 3 at 8; Tab 5, Ex. 1 (2003 PSI) at 56; Tab 2, Ex. 3. He began going to AA meetings three times a week. 2003 PSI at 56. However, in the fall of 2002, he stopped attending AA meetings. 2003 PSI at 59. The individual nonetheless remained abstinent until March 2003, when he was arrested for (DWI) after drinking at a bar/pool hall with some friends. 2003 PSI at 55-56; Tr. at 215. He promptly reported the incident to his manager. Tab 3, Ex. 1. A week after the incident, the individual enrolled in the EAP program again. 2003 PSI at 45-46. In April 2003, he began attending AA meetings approximately once a week. Individ. Ex. M. He continued attending AA weekly until February 2004, when he increased his attendance to twice weekly, and then in March 2004 he began attending five times a week on average. *Id.* In February 2004 the individual began attending weekly sessions with his counselor, a psychiatrist who specializes in substance abuse problems. Tr. at 86, 192-195. In April 2004 the individual stopped by a bar to play pool, and someone bought him a drink. Tr. at 215-217. The individual took a few sips and then stopped drinking and left the bar. Tr. at 221-226. He contacted his sponsor, informed his counselor and his AA group, and restated his sobriety date to April 2004. The individual testified that he no longer socializes with those with whom he used to shoot pool. Tr. at 226. He has not had a drink since that night. Tr. at 221.

The individual was not pleased with his relationships with the first two AA sponsors he chose, but has been working well with his current sponsor for the past three months. Tr. at 141-142; 210-211. He has attended over 200 AA meetings since April 2003 and was able to accurately describe the 12 Steps of AA at the hearing. Tr. at 232-236. The individual now attends meetings from five to six days a week. Tr. at 189-192. He also takes random drug tests, and all of those tests have been negative. Tr. at 192; Individ. Ex. N. The individual has a troubled marriage, and he admitted that his wife is not supportive of his sobriety. Tr. at 228.

C. Evidence of Rehabilitation and Reformation

Two medical professionals (the DOE psychiatrist and the individual's counselor, also a psychiatrist) testified at the hearing and both agreed that the individual has been sufficiently reformed and rehabilitated to resolve the security concerns raised by his alcohol abuse. Tr. at 96-106, 247. By the time of the hearing, the individual had completed seven months of weekly sessions with the counselor and attended 277 Alcoholics Anonymous meetings. Tr. at 192-195, 232; Indiv. Ex. M. The individual abstained from alcohol from March 2003 to April 2004 (five months prior to the hearing). However, as explained above, in April 2004 the individual drank a small amount of beer at a bar. Nonetheless, both psychiatrists discounted this incident and concluded that the individual's honesty about reporting the incident, coupled with his immediate rejection of the drink, demonstrated that the individual was well on the path to rehabilitation. Tr. at 91-93; 243-244.

The individual's counselor had recommended to the individual early in their sessions that he attend AA more regularly and that he have a more stable relationship with a sponsor. Tr. at 88. According to the counselor, the individual "diligently" followed the counselor's recommendation. *Id.* The counselor described the individual as open, honest, and very serious about his AA meetings. The counselor concluded that the individual has a low likelihood of relapse because the individual has a method to deal with stress and also has used AA principles to deal with stress. Tr. at 100.

The DOE psychiatrist was present at the entire hearing and observed the testimony of the individual and his witnesses. He was impressed that the individual was very familiar with the AA Twelve Steps, and that the individual seemed to be very committed to working the steps with his current sponsor. Tr. at 245-246. The DOE psychiatrist also found persuasive the positive testimony of the individual's colleagues, who all testified that the individual was an excellent worker and had never displayed any sign of an alcohol problem. Tr. at 244. The DOE psychiatrist did not describe the individual's drink in April 2004 as a relapse, but rather called it a "slip," because the individual stopped drinking almost immediately and did not drink to intoxication. Tr. at 244. At the conclusion of the hearing, the DOE psychiatrist stated "the bottom line is, putting it all together, my opinion is that you are showing adequate evidence of rehabilitation or reformation." Tr. at 247.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Review*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, both mental health professionals persuasively testified that the individual presented adequate evidence of rehabilitation from alcohol abuse. The individual fulfilled the requirements of the DOE psychiatrist for rehabilitation: (1) he has attended over 200 hours of AA, twice the amount recommended; (2) he presented documented evidence of attendance at AA, see Indiv. Ex. L-M; and (3) he has a sponsor.³ Thus, I find that the individual has mitigated the security

³ Both psychiatrists minimized the importance of the April 2004 incident. If that incident is not taken into account, the individual had 18 months of abstinence at the time of the hearing and meets that requirement as well.

concerns of Criteria H and J. As regards Criterion L, the March 2003 arrest occurred while the individual was under the influence of alcohol. Our cases require that an individual demonstrate rehabilitation or reformation from an alcohol problem in order to mitigate the concerns raised by an alcohol-related arrest. See *Personnel Security Review*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). As discussed above, the individual has presented adequate evidence of rehabilitation from alcohol abuse. Therefore, I further find that the individual has mitigated the Criterion L security concerns.

III. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h), (j) and (l) in suspending the individual's access authorization. The individual has, however, presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: February 18, 2005